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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 18 Cr. 259 (PKC)

6 KYRYLO SAMOILENKO,

7 Defendant.
-----x Sentence

8 January 21, 2020
9 2:50 p.m.

10 Before:

11 HON. P. KEVIN CASTEL,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
18 BY: ABIGAIL S. KURLAND
19 Assistant United States Attorney

20 ALAN M. NELSON
21 Attorney for Defendant

22 Also Present:

23 Special Agent Bruce Turpin, FBI

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1 (Case called)

2 THE DEPUTY CLERK: For the government.

3 MS. KURLAND: Good afternoon, your Honor. Abigail
4 Kurland for the government. I'm joined by F.B.I. Special Agent
5 Bruce Turpin. I'm here on behalf of my colleague Jonathan
6 Rebold, who had a last-minute family emergency.

7 THE COURT: So I understand. Good to see you again,
8 Ms. Kurland.

9 MS. KURLAND: Thank you, your Honor.

10 THE COURT: And for the defendant.

11 MR. NELSON: Good afternoon, your Honor. Alan Nelson
12 for Mr. Samoilenko. Mr. Samoilenko is standing to my right.

13 THE COURT: Good to see you Mr. Nelson, and same to
14 you, Mr. Samoilenko.

15 So let me go through what I have, and the question
16 will be whether I have what I should have.

17 I have a presentence report, recommendation, and
18 addendum revised by probation on December 19, 2019.

19 I have a sentencing memorandum prepared by Mr. Nelson
20 and submitted on or about January 11, which helpfully annexes a
21 number of letters and also a certificate regarding
22 Mr. Semoilenko.

23 I have a letter from the government dated January 6,
24 2020, which outlines the defendant's cooperation.

25 I have a notice of intent to request judicial removal

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1 with the factual allegations in support, and it's been signed
2 by the defendant and his attorney, and I have a concurrence
3 from the U.S. Immigration and Customs Enforcement. I have an
4 order of judicial removal, and I have a preliminary order of
5 forfeiture.

6 Do I have everything I should have in this case?

7 MS. KURLAND: Yes, your Honor.

8 MR. NELSON: Yes, your Honor.

9 THE COURT: Has the defendant read, reviewed, and
10 discussed with you the presentence report, recommendation, and
11 addendum?

12 MR. NELSON: He has, your Honor.

13 THE COURT: Does the defendant have any objections to
14 the facts set forth in the presentence report?

15 MR. NELSON: No.

16 THE COURT: Does the defendant have any objection to
17 the guideline calculation set forth in the presentence report?

18 MR. NELSON: No.

19 THE COURT: All right.

20 Does the government have any objections to the facts
21 set forth in the presentence report?

22 MS. KURLAND: No, your Honor.

23 THE COURT: Any objection to the guideline
24 calculation?

25 MS. KURLAND: No, your Honor.

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1 THE COURT: Mr. Nelson, one other question. Any
2 objections to the facts set forth in the government's letter of
3 January 6, 2020?

4 MR. NELSON: No, Judge.

5 THE COURT: I adopt as my findings of facts the facts
6 set forth in the presentence report supplemented by the
7 government's letter of January 6, 2020. Further, I find that
8 the guidelines are correctly calculated and that defendant is
9 in total offense level 25, criminal history category I, and
10 faces a guideline range of 60 to 71 months plus 24 months
11 consecutive on Count Two.

12 I understand the government moves pursuant to Section
13 3553(e) that the defendant be sentenced in light of the factors
14 set forth in Section 5K1.1 of the guidelines, is that right,
15 Ms. Kurland.

16 MS. KURLAND: Yes, your Honor.

17 THE COURT: And without objection, that application is
18 granted.

19 MR. NELSON: Judge, just for the record, I believe
20 that the court might have misspoke. The guideline range
21 actually is 57 to 71 months, not 60 to 71 months, plus the 24
22 months consecutive under the aggravated identity theft.

23 THE COURT: All right. Here is where I am. I am on
24 page 25 of the presentence report, and it has a total offense
25 level of 25, criminal history category I, and the range, which

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I mentioned. Let me just look at the sentencing table to see whether it was correctly transcribed. It looks like it was not correctly transcribed, and it looks like you are correct.

So the recommendation page of the PSR is in error in saying 60 to 71 months on Counts One and Three. It should read 57 to 71 months.

Is that correct, Mr. Nelson?

MR. NELSON: Yes, Judge.

THE COURT: And Ms. Kurland, do you concur?

MS. KURLAND: Yes.

THE COURT: All right. So that is the range, and I thank you, Mr. Nelson, for pointing that out to my attention.

With that, Mr. Nelson, I will give you an opportunity to speak on behalf of the defendant.

MR. NELSON: Thank you, your Honor.

Your Honor, before speaking and addressing the government's motion under 5K1.1, which of course we would join in, and the 3553 factors, I want to reiterate two points that I had raised in my sentencing memorandum.

The first is that I would submit that the government, absent Mr. Semoilenko's candor, would not have been able to bring the narcotics charge against him, and that increases his guideline by two levels once the grouping rules are applied.

In addition, I would submit that, as it relates to the aggravated identity theft, Count One, the government might have

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had some difficulty proving that count absent his cooperation; and, second, other than Mr. Stasiv, none of the other defendants in the case were required to enter a plea of guilty to that count. And when I first began representing Mr. Semoilenko and prior to entering into the cooperation agreement, I had requested a *Pimentel* letter for purposes of representing alternatives to my client, and in the *Pimentel* letter it did not include an aggravated identity theft charge.

I bring that to the court's attention because I submit it would be unfair to punish Mr. Semoilenko for his candor which increases his sentencing exposure and, in essence, what it does is it increases his level to a range of 46 to 57 months -- I withdraw that, your Honor, 57 to 71 months that we had just discussed, and I would submit that his level really should be considered as level 23, which would be a 46- to 57-month range.

The probation department is recommending a sentence, based upon the government's motion, of 36 months' imprisonment. I had done the calculations and, with credit for time served and good-time credit, were the court to sentence the defendant at the recommendation of probation to 36 months' imprisonment, he would have seven months left to serve in Bureau of Prisons custody as he sits here today.

Which leads me to the second point, and that is that, despite having entered the order of removal, he will not be

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1 removed immediately. I spoke with immigration counsel, Mr. Kai
2 De Graaf, who I deal with regularly, on Friday to find out how
3 things are, in essence, turning out in the New York area with
4 judicial orders already signed, and the backlog is about two to
5 four months, and this is with a judicial order, where there is
6 a complete waiver of all proceedings.

7 So I bring it to the court's attention because, were
8 the court to sentence my client to time served, he would still
9 serve another at least three months imprisonment, but it would
10 be in an ICE facility, probably in the lovely facilities in
11 Hudson County, in New Jersey, as opposed to if he had been a
12 United States citizen and was being sentenced, he would be
13 serving one half of that period of time in either a halfway
14 house or home confinement under 3585 of the United States Code.
15 And I think that's an important factor for the court to
16 consider in determining the appropriate sentence to impose.

17 We join in the government's motion pursuant to Section
18 5K1.1. Mr. Semoilenko's cooperation was extensive, immediate,
19 and complete. This court had the opportunity to observe him
20 testify for approximately three days during the course of the
21 trial.

22 Having testified at the trial, in addition to being
23 instrumental in securing the conviction of Mr. Stasiv, he was
24 also instrumental in the government acquiring guilty pleas from
25 each of the other coconspirators in this case.

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1 Significantly, because he shall be returned to the
2 Ukraine, the knowledge of his coconspirators and their
3 relatives and associates that he cooperated in this case is
4 rather well known in the Ukraine and, as a consequence, it
5 places he and his family in the Ukraine in danger. And it is
6 somewhat different in his status than in the typical
7 cooperation situation because here the government isn't in a
8 position to be able to provide appropriate protection for
9 Mr. Semoilenko and his family once he returns to the Ukraine.
10 So I ask the court to consider that in determining the
11 appropriate sentence to impose.

12 In evaluating the 3553 factors, Mr. Semoilenko is
13 extremely remorseful for his actions. He destroyed his
14 marriage, even though his wife very much loves him to this last
15 moment. He is well aware of the financial cost that he caused
16 to all of the various victims in this case and how much his
17 involvement in this case and his specialized skills assisted in
18 that taking place and has been extremely remorseful from the
19 day I met him when I took over for retained counsel in the
20 case. He ruined his own opportunities to be able to reside
21 here in the United States, with the type of educational
22 background he had, and he has placed himself and his family in
23 severe danger by these actions.

24 His remorse has been shown very clearly by his
25 complete and total candor and his cooperation in this

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1 investigation and, on the flip side of the coin, despite all
2 the errors he has made, given his educational background, with
3 a master's degree in finance, his extensive work history in the
4 Ukraine and his multilingual skills, he has both a promising
5 future and literally no opportunity to be able to return to the
6 type of fraudulent conduct he had engaged in here as a result
7 of his cooperation.

8 So we ask the court to take all of those factors into
9 consideration, and we would urge the court to sentence
10 Mr. Semoilenko to a period of time served.

11 Thank you, your Honor.

12 THE COURT: Thank you, Mr. Nelson.

13 Mr. Semoilenko, this is your opportunity to speak, to
14 bring to my attention any facts or circumstances that you
15 believe I should take account of. If there is anything you
16 wish to say, this is the time to say it.

17 THE DEFENDANT: Yes, your Honor.

18 Honestly I'm speechless. I'm nervous. I've never
19 been in a position like this, like I'm in right now. A lot of
20 words have been said already, so I will try to be brief.

21 First and most, I want to apologize. I want to
22 apologize to all people whom I caused any troubles, any
23 financial issues, any family issues through all lives I have
24 endangered and so forth. I want to apologize to you and to
25 government for all the time that I have taken from you for

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1 actions that I did.

2 I totally accept responsibility for everything that I
3 did. I will never come back to the life like that, because
4 what I have been through through the last two years totally
5 changed me, totally changed my life. My marriage is destroyed,
6 as Mr. Nelson said already. My wife left me. I will be
7 deported from the United States. I will never be able, most
8 probably, to come back to this country. I will definitely
9 never live the same life as I did before.

10 I will try to improve myself even more than I did
11 during last two years which were also really helpful, in my
12 opinion, for me, because I became more religious person, I
13 became more book smart person, I read more, I educated myself
14 more, and so forth.

15 I don't know what to say else, your Honor. The most
16 important thing, I'm really sorry for everything that I have
17 done.

18 Thank you.

19 THE COURT: Thank you, Mr. Semoilenko.

20 Is there anything the government wishes to add from
21 its letter of January 6?

22 MS. KURLAND: Yes, your Honor.

23 Briefly, I spoke to Mr. Rebolt this morning, who
24 caught me up on the case, and I want to start by saying that
25 the crime here is not insignificant. It was a serious crime

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1 that was sophisticated. It involved multiple players that
2 spanned the United States and even overseas, and it had many
3 different aspects to it, from the check cashing scheme to the
4 hotel fraud scheme. So the nature and circumstances and
5 seriousness of the conduct are something that the court should
6 also seriously consider, as I'm sure the court will.

7 And that has to be balanced against the substantial
8 assistance that the defendant has given the government, which
9 thankfully the court is well aware of, having presided over
10 this trial. Some things that Mr. Rebolt wanted me to
11 underscore and remind the court about was that the defendant's
12 cooperation was nearly immediate. As soon as he was arrested,
13 he gave a statement, I believe it was in Virginia, and then
14 began proffering with the government as soon as he was brought
15 into the Southern District of New York. Because of his
16 cooperation, several other defendants in the case pled guilty.
17 And because of his credible testimony, the government prevailed
18 at trial, including on a significant aggravated identity theft
19 count.

20 During the trial and during other court appearances,
21 it's been reported that codefendants made threatening gestures
22 to the defendant, so his safety is something that he is rightly
23 concerned about, and that is also something that the court
24 should consider when sentencing him.

25 For all of those reasons -- I should also mention,

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1 excuse me, that the defendant consented to his phone being
2 searched and opened the phone for us and, as the court is well
3 aware, even if we had probable cause and a judicial warrant,
4 sometimes, oftentimes, we can't get into certain phones, and
5 the defendant opened his phone to the government here, and my
6 understanding is that it provided a wealth of information and
7 corroborated his testimony, and I'm sure it was powerful
8 independent evidence for the jury to consider.

9 So for all of those reasons, the defendant has earned
10 his 5K letter, as reflected in Mr. Rebold's submission, and the
11 court should sentence him accordingly.

12 THE COURT: Thank you.

13 Mr. Nelson, is there an objection to my entering the
14 order of judicial removal?

15 MR. NELSON: No, your Honor.

16 THE COURT: Is there an objection to my entering the
17 preliminary order of forfeiture money judgment?

18 MR. NELSON: No.

19 THE COURT: Thank you.

20 This is the court's statement of reasons for the
21 sentence to be imposed on Kyrylo Samoilenko:

22 In sentencing Mr. Semoilenko, I have considered all of
23 the materials that I referenced at the outset, supplemented by
24 the thoughtful comments of Mr. Nelson, the sincere statements
25 of Mr. Semoilenko, and the observations of Ms. Kurland.

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1 I have considered each of the factors set forth in
2 Section 3553(a). I need not recount all that I have
3 considered, but I have considered all of that.

4 And here I have presided at the trial of Marko Stasiv.
5 I observed the testimony of Mr. Semoilenko, which I found to be
6 truthful.

7 I have sentenced thus far I believe it is five
8 defendants in this case -- Mr. Razumovskiy, Mr. Dikler,
9 Mr. Fazlutdinov, Mr. Stasiv, and Mr. Toporov. So I'm
10 thoroughly familiar with the nature of the check fraud scheme
11 and the hotel loyalty point scheme and scam, and I need not
12 recount it here.

13 The defendant is not a citizen of the United States.
14 He will be deported from the United States to the Ukraine. He
15 is 29 years of age. He is a well-educated man and has an
16 advanced degree. From my recollection it was something like
17 Odessa University or Odessa State University. So he did not
18 have to commit these crimes, but he did, and he personally
19 received approximately \$126,130.94 from the scheme. And there
20 were real victims.

21 But Mr. Semoilenko set out to make things right by
22 agreeing to cooperate, and his cooperation was timely and
23 helpful, useful, complete, and did in fact put him in some
24 jeopardy. As a cooperator, a sentence in the neighborhood of a
25 year and a day would be something that I would probably have

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1 considered in this case in the first place and, with the time
2 served, which goes back to, well, it is March 8, 2018, first
3 produced in this district, but he was detained on February 13,
4 2018 in the Eastern District of Pennsylvania. So if it was a
5 year and a day, he would already be just about at that mark.

6 So for all of these circumstances, I conclude that a
7 sentence of time served, with a term of three years' supervised
8 release on each count, to run concurrently, waiver of the fine
9 based on limited assets, limited earning ability, forfeiture of
10 \$126,130.94 and restitution of \$542,301.64 and a special
11 assessment of \$300 is sufficient but not greater than necessary
12 to achieve the purposes of Section 3553(a).

13 Does the defendant or his counsel have any objection
14 to the court's proposed sentence or the statement of reasons
15 for that sentence?

16 MR. NELSON: No, your Honor.

17 THE COURT: Same question for the government.

18 MS. KURLAND: Judge, the only question that I have is
19 that my understanding is that the restitution in this case --
20 that the government was hoping to be able to figure out
21 everybody's sentence and then, if the defendant would consent,
22 to have an order imposed 30 days after the last defendant is
23 sentenced so that joint and several liability can be worked out
24 appropriately.

25 THE COURT: I think I have gone along with that in

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1 other cases.

2 Mr. Nelson, is there any objection from the defendant
3 to my doing that?

4 MR. NELSON: There is not indeed. Mr. Rebold had
5 raised this with me earlier today. I have spoken to
6 Mr. Semoilenco about that, and he consents.

7 THE COURT: All right. Okay. So then I will order
8 that the order of forfeiture be submitted within 30 days --
9 order of restitution be submitted within 30 days of the
10 sentencing of the last defendant in the case.

11 Please stand and I will impose sentence:

12 Kyrylo Samoilenco, it is the judgment of this court
13 that you are hereby remanded to the custody of the United
14 States Bureau of Prisons to be imprisoned for time served.

15 Upon release from imprisonment, you shall be placed on
16 supervised release for three years, with the following terms
17 and conditions:

18 You shall not commit another federal, state, or local
19 crime.

20 You will not and may not unlawfully possess a
21 controlled substance.

22 You must refrain from any unlawful use of a controlled
23 substance and must submit to one drug test within 15 days of
24 release from imprisonment and two periodic drug tests at least
25 thereafter.

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1 You must cooperate in the collection of DNA as
2 directed.

3 You must make restitution in accordance with law.

4 You must comply with standard conditions 1 through 12
5 as set forth on pages 28 and 29 of the presentence report.

6 You shall submit your person, any property, residence,
7 vehicle, papers, computer, other electronic communication data
8 storage devices, cloud storage, or media and effects to a
9 search by any United States probation officer and, if needed,
10 with the assistance of any law enforcement. The search is to
11 be conducted where there is reasonable suspicion concerning
12 violation of a condition of release or unlawful conduct by the
13 person being supervised. Failure to submit to a search may be
14 grounds for revocation. You shall warn any other occupants
15 that the premises may be subject to search pursuant to this
16 condition. Any search shall be conducted at a reasonable time
17 and in a reasonable manner.

18 You shall provide the probation officer with access to
19 any requested financial information. You must not incur new
20 credit card charges or open additional lines of credit without
21 the approval of the probation officer unless you are in
22 compliance with the installment payment schedule.

23 It is further ordered that you must pay to the United
24 States a special assessment of \$300 which shall be due
25 immediately.

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1 You shall make restitution in accordance with the
2 order that will be entered in this court within 30 days after
3 the last defendant is sentenced.

4 You shall forfeit to the United States all right,
5 title, and interest in any and all property used or intended to
6 be used in any manner or part to commit or facilitate the
7 commission of the offense, including but not limited to a sum
8 of U.S. currency representing proceeds traceable to the
9 commission of the offense and specifically the sum of
10 \$126,130.94.

11 You have the right to appeal the sentence I have
12 imposed on you. If you cannot afford the cost of an appeal,
13 you may apply for leave to appeal as a poor person. The time
14 limits for filing a notice of appeal are brief and they are
15 strictly enforced. If you request, the Clerk of Court will
16 prepare and file a notice of appeal on your behalf immediately.

17 Do you understand all that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: All right. Please be seated.

20 The preliminary order of forfeiture money judgment has
21 been signed. The order of judicial removal has been signed.
22 An order which will be tendered to the marshals indicating that
23 you have been sentenced to time served subject to any detainees
24 that have been lodged by immigration authorities.

25 Anything further from the government?

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1 MS. KURLAND: The government would move to dismiss any
2 underlying indictments in the case.

3 THE COURT: Without objection, that's granted.

4 Anything from the defendant?

5 MR. NELSON: No, your Honor. Thank you.

6 THE COURT: All right. Mr. Semoilenko, I wish you a
7 very long and prosperous and healthy life. You have paid
8 dearly for your crimes, and I hope that you go on to live a
9 law-abiding and productive life.

10 THE DEFENDANT: Thank you.

11 THE COURT: We are adjourned.

12 MR. NELSON: Thank you, your Honor.

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